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15   **UNITED STATES DISTRICT COURT**

16   **NORTHERN DISTRICT OF CALIFORNIA**

17   **SAN FRANCISCO DIVISION**

18

19 DANIEL STRUB,

20   Plaintiff,

21   v.

22 YOUTUBE, LLC, and GOOGLE INC.,

23   Defendants.

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C.A. No. 3:13-cv-04704 (RS)

**STIPULATED ORDER RE:
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION**

1 **1. PURPOSE**

2   This Order will govern discovery of electronically stored information ("ESI") in this case

3 as a supplement to the Federal Rules of Civil Procedure, this Court's Guidelines for the Discovery

4 of Electronically Stored Information, and any other applicable orders and rules.

5 **2. COOPERATION**

6   The parties are aware of the importance the Court places on cooperation and commit to

7 cooperate in good faith throughout the matter consistent with this Court's Guidelines for the

8 Discovery of ESI.

9 **3. LIAISON**

10   a)   The parties have identified liaisons to each other who are and will be

11 knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison

12 will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery,

13 including the location, nature, accessibility, format, collection, search methodologies, and

14 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about

15 ESI and to help resolve disputes without court intervention.

16   b)   Defendants appoint Andrew Elgin and Adam Botzenhart as their e-discovery

17 liaisons.

18   c)   Plaintiff appoints Roberto L. Gomez

19 **4. PRESERVATION**

20   The parties have discussed their preservation obligations and needs and agree that

21 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs

22 and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

23   a)   The parties have discussed the types of ESI they believe should be preserved and

24 the custodians, or general job titles or descriptions of custodians, for whom they believe ESI

25 should be preserved, e.g., "HR head," "scientist," and "marketing manager." The parties shall add

26 or remove custodians as reasonably necessary;

27   b)   The parties have agreed that ESI will be preserved for three custodians per side;

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c)   These data sources are not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved pursuant to normal business retention, but not searched, reviewed, or produced:

1.   backup systems and/or tapes used for disaster recovery; and

2.   systems no longer in use that cannot be accessed.

d)   Among the sources of data the parties agree are not reasonably accessible, the parties agree not to preserve the following:

1.   voicemail messages

2.   information from handsets, mobile devices, personal digital assistants, and tablets that is duplicative of information that resides in a reasonably accessible data source;

3.   instant messaging;

4.   automatically saved versions of documents and emails;

5.   video and audio recordings;

6.   deleted, slack, fragmented, or other data accessible only by forensics;

7.   random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;

8.   On-line access data such as temporary internet files, history, cache, cookies, and the like;

9.   dynamic fields of databases or log files that are not retained in the usual course of business; and

10.   Data in metadata fields that are frequently updated automatically, such as last opened dates.

5.   SEARCH

a)   The parties agree that, in responding to an initial Fed. R. Civ. P. 34 request, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

b)   Each party will use its best efforts to filter out common system files and application executable files and may use a commercially reasonable hash identification process.   Hash values that may be filtered out during this process are located in the National Software Reference Library ("NSRL") NIST hash set list.   Additional culling of system file types based on file extension may

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1   include, but are not limited to: WINNT, LOGS, DRVS, MP3, MP4, C++ Program File (c), C++

2   Builder 6 (cpp), Channel Definition Format (cdf), Creatures Object Sources (cos), Dictionary file

3   (dic), Executable (exe), Hypertext Cascading Style Sheet (css), JavaScript Source Code (js), Label

4   Pro Data File (IPD), Office Data File (NICK), Office Profile Settings (ops), Outlook Rules Wizard

5   File (rwz), Scrap Object, System File (dll), Temporary File (tmp), Windows Error Dump (dmp),

6   Windows Media Player Skin Package (wmz), Windows NT/2000 Event View Log file (evt),

7   Python Script files (.py, .pyc, .pud, .pyw), Program Installers.

8   c)   Each party is required to produce only a single copy of a responsive document

9   and each party may de-duplicate responsive ESI (based on MD5 or SHA-1 hash values at the

10   document level) across custodians. For emails with attachments, the hash value is generated

11   based on the parent/child document grouping. A party may also de-duplicate "near-duplicate"

12   email threads as follows: In an email thread, only the final-in-time document need be produced,

13   assuming that all previous emails in the thread are contained within the final message. Where a

14   prior email contains an attachment, that email and attachment shall not be removed as a "near-

15   duplicate." To the extent that de-duplication through MD5 or SHA-1 hash values is not possible,

16   the parties shall meet and confer to discuss any other proposed method of de-deduplication.

17   d)   No provision of this Order affects any inspection of source code that is

18   responsive to a discovery request and will be made available consistent with the protective order

19   governing this case.

20   **6. PRODUCTION FORMATS**

21   The parties agree to produce documents in the formats described in Appendix 1 to this

22   Order.   If particular documents warrant a different format, the parties will cooperate to arrange

23   for the mutually acceptable production of such documents. The parties agree not to degrade the

24   searchability of documents as part of the document production process.

25   **7. DOCUMENTS PROTECTED FROM DISCOVERY**

26   a)   Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-

27   protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection

28   from discovery in this case or in any other federal or state proceeding. For example, the mere

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1 production of privileged or work-product-protected documents in this case as part of a mass

2 production is not itself a waiver in this case or in any other federal or state proceeding.

3 Information that contains privileged matter or attorney work product shall be immediately

4 returned if such information appears on its face to have been inadvertently produced or if notice

5 is provided.

6   b)   Communications involving trial counsel that post-date the filing of the complaint

7 need not be placed on a privilege log. Communications may be identified on a privilege log by

8 category, rather than individually, if appropriate.

9   c)   Activities undertaken in compliance with the duty to preserve information are

10 protected from discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

11   **8. MODIFICATION**

12   This Stipulated Order may be modified by a Stipulated Order of the parties or by the

13 Court for good cause shown. Any such modified Stipulated Order will be titled sequentially as

14 follows, "First Modified Stipulated Order re: Discovery of Electronically Stored Information for

15 Standard Litigation," and each modified Stipulated Order will supersede the previous Stipulated

16 Order.

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18   **IT IS SO STIPULATED**, through Counsel of Record.

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1   Dated: April 4, 2014   OSTRAGER CHONG FLAHERTY & BROITMAN P.C.

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13   *Counsel for Plaintiff Daniel Strub*

14 Dated: April 4, 2014   QUINN EMANUEL URQUHART & SULLIVAN, LLP

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22   *Inc.*

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1   **IT IS ORDERED** that the foregoing Agreement is approved.

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4   Dated: 4/8/14 _____   _____

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6   Richard Seeborg, United States District Judge

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APPENDIX 1

PRODUCTION FORMAT AND METADATA

1. **Production Components.** Productions shall include, single page TIFFs, Text Files, an ASCII delimited metadata file (.txt, .dat, or .csv) and an image load file that can be loaded into commercially acceptable production software (e.g., Concordance).

2. **Image Load File** shall contain the following comma-delimited fields: BEGBATES, VOLUME, IMAGE FILE PATH, DOCUMENT BREAK, FOLDER BREAK, BOX BREAK, PAGE COUNT to the extent applicable.

3. **Metadata Fields and Metadata File.** Each of the metadata and coding fields set forth below that can be extracted shall be produced for each document. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a document, with the exception of the following: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, and CUSTODIAN.   The metadata file shall be delimited according to the following characters:

- Delimiter = ¶ (ASCII:020)
- Text-Qualifier = þ (ASCII:254)
- New Line = ® (ASCII:174) or ÿ (ASCII:255)

Field Name	Field Description
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CUSTODIAN	Includes the Individual (Custodian) from whom the documents originated and all Individual(s) whose documents de-duplicated out (De-Duped Custodian).

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SUBJECT	Subject line of email
TITLE	Title from properties of document
DATESENT	Date email was sent (format: MM/DD/YYYY)
TO	All recipients that were included on the "To" line of the email
FROM	The name and email address of the sender of the email
CC	All recipients that were included on the "CC" line of the email
BCC	All recipients that were included on the "BCC" line of the email
AUTHOR	Any value populated in the Author field of the document properties
FILENAME	Filename of an electronic document (Edoc or attachment)
DATEMOD	Date an electronic document was last modified (format: MM/DD/YYYY) (Edoc or attachment)
DATECREATED	Date the document was created (format: MM/DD/YYYY) (Edoc or attachment)
NATIVELINK	Native File Link (Native Files only)

4. **TIFFs.**   Documents that exist only in hard copy format shall be scanned and produced as TIFFs. Unless excepted below, documents that exist as ESI shall be converted and produced as TIFFs. Unless excepted below, single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi) for all documents. Each TIFF image shall be named according to a unique corresponding Bates number associated with the document. Each image shall be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). TIFFs shall show all text and images that would be visible to a user of the hard copy documents.

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1 5. **Text Files.** A single multi-page text file shall be provided for each document, and the

2   filename should match its respective TIFF filename.   A commercially acceptable

3   technology for optical character recognition "OCR" shall be used for all scanned, hard

4   copy documents.   When possible, the text of native files should be extracted directly

5   from the native file. Text files will not contain the redacted portions of the documents

6   and OCR text files will be substituted instead of extracted text files for redacted

7   documents.

8 6. **Image Load Files / Data Load Files.** Each TIFF in a production must be referenced in

9   the corresponding image load file.   The total number of documents referenced in a

10   production's data load file should match the total number of designated document breaks

11   in the Image Load file(s) in the production. The total number of pages referenced in a

12   production's image load file should match the total number of TIFF files in the

13   production.   The total number of documents in a production should match the total

14   number of records in the data load file.

15 7. **Bates Numbering.** All images must be assigned a unique Bates number that is

16   sequential within a given document and across the production sets.

17 8. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped

18   with the appropriate confidentiality designations in accordance with the Protective Order

19   in this matter. Each responsive document produced in native format will have its

20   confidentiality designation identified in the filename of the native file.

21 9. **Redaction Of Information.** If documents are produced containing redacted information,

22   an electronic copy of the original, unredacted data shall be securely preserved in such a

23   manner so as to preserve without modification, alteration or addition the content of such

24   data including any metadata therein.

25 10. **Spreadsheets.** TIFF images of spreadsheets (MS Excel, Google Sheets) need not be

26   produced unless redacted, in which instance, spreadsheets shall be produced in TIFF

27   with OCR Text Files.   Native copies of spreadsheets shall be produced with a link in the

28   NativeLink field, along with extracted text and applicable metadata fields set forth in

STIPULATED ORDER RE: DISCOVERY OF
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1   Paragraph 3. A TIFF placeholder indicating that the document was provided in native

2   format should accompany the database record. If a spreadsheet has been redacted, TIFF

3   images and OCR text of the redacted document will suffice in lieu of a native file and

4   extracted text.   The parties will make reasonable efforts to ensure that any spreadsheets

5   that are produced only as TIFF images are formatted so as to be readable.

6   11. **Proprietary Files.** To the extent a response to discovery requires production of ESI

7   accessible only through proprietary software, the parties should continue to preserve each

8   version of such information.   The parties shall meet and confer to finalize the

9   appropriate production format.

10   12. **Request(s) for Additional Native Files.** If good cause exists to request production of

11   certain files, other than those specifically set forth above, in native format, the party may

12   request such production and provide an explanation of the need for native file review,

13   which request shall not unreasonably be denied.   Any native files that are produced shall

14   be produced with a link in the NativeLink field, along with extracted text and applicable

15   metadata fields set forth in Paragraph 3.   A TIFF placeholder indicating that the

16   document was provided in native format should accompany the database record. If a file

17   has been redacted, TIFF images and OCR text of the redacted document will suffice in

18   lieu of a native file and extracted text.

19   13. **Production Media.** Documents shall be produced on external hard drives, readily

20   accessible computer(s) or other electronic media ("Production Media"), as appropriate.

21   Each piece of Production Media shall identify a production number corresponding to the

22   production volume (e.g., "VOL001," "VOL002"), as well as the volume of the material

23   in that production (e.g. "-001," "-002"). Each piece of Production Media shall also

24   identify: (1) the producing party's name; (2) the production date; (3) the Bates Number

25   range of the materials contained on the Production Media; and (4) the set(s) of requests

26   for production for which the documents are being produced.

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